

1 The Honorable James L. Robart
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UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,
Plaintiff,
v.
KELLY THOMAS JACKSON,
Defendant.

No. CR20-148JLR

PLEA AGREEMENT

The United States of America, by and through Brian T. Moran, United States Attorney for the Western District of Washington, and Todd Greenberg, Assistant United States Attorney for said District, Defendant Kelly Thomas Jackson and Defendant's attorney, Robert Goldsmith, enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11(c).

1. **The Charges.** Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enter a plea of guilty to the following charges contained in Counts 1 and 3 of the Indictment: *Unlawful Possession of a Destructive Device*, in violation of Title 26, United States Code, Sections 5861(d) and 5845(a)(8).

1 By entering the pleas of guilty, Defendant hereby waives all objections to the form
2 of the charging document. Defendant further understands that before entering any guilty
3 plea, Defendant will be placed under oath. Any statement given by Defendant under oath
4 may be used by the United States in a prosecution for perjury or false statement.

5 **2. Elements of the Offense.** The elements of the offenses to which
6 Defendant is pleading guilty are as follows:

7 First, Defendant knowingly possessed a destructive device, as that term is
8 defined in Title 26, United States Code, Section 5845(a)(8), that is, an
9 explosive or incendiary device; and

10 Second, Defendant did not register the device in the National Firearms
11 Registration and Transfer Record.

12 **3. The Penalties.** Defendant understands that the statutory penalties
13 applicable to the offense to which Defendant is pleading guilty are as follows: A
14 maximum term of imprisonment of ten (10) years; a fine of up to \$10,000; a period of
15 supervision following release from prison of up to three years; and a mandatory special
16 assessment of \$100 dollars. If a probationary sentence is imposed, the probation period
17 can be for up to five years.

18 Defendant understands that supervised release is a period of time following
19 imprisonment during which Defendant will be subject to certain restrictive conditions and
20 requirements. Defendant further understands that, if supervised release is imposed and
21 Defendant violates one or more of the conditions or requirements, Defendant could be
22 returned to prison for all or part of the term of supervised release that was originally
23 imposed. This could result in Defendant serving a total term of imprisonment greater
24 than the statutory maximum stated above.

25 Defendant understands that as a part of any sentence, in addition to any term of
26 imprisonment and/or fine that is imposed, the Court may order Defendant to pay
27 restitution to any victim of the offense, as required by law.

1 Defendant further understands that the consequences of pleading guilty may
 2 include the forfeiture of certain property, either as a part of the sentence imposed by the
 3 Court, or as a result of civil judicial or administrative process.

4 Defendant agrees that any monetary penalty the Court imposes, including the
 5 special assessment, fine, costs, or restitution, is due and payable immediately and further
 6 agrees to submit a completed Financial Statement of Debtor form as requested by the
 7 United States Attorney's Office.

8 **4. Rights Waived by Pleading Guilty.** Defendant understands that by
 9 pleading guilty, Defendant knowingly and voluntarily waives the following rights:

- 10 a. The right to plead not guilty and to persist in a plea of not guilty;
- 11 b. The right to a speedy and public trial before a jury of Defendant's
 peers;
- 13 c. The right to the effective assistance of counsel at trial, including, if
 14 Defendant could not afford an attorney, the right to have the Court appoint one for
 15 Defendant;
- 16 d. The right to be presumed innocent until guilt has been established
 17 beyond a reasonable doubt at trial;
- 18 e. The right to confront and cross-examine witnesses against Defendant
 at trial;
- 20 f. The right to compel or subpoena witnesses to appear on Defendant's
 21 behalf at trial;
- 22 g. The right to testify or to remain silent at trial, at which trial such
 23 silence could not be used against Defendant; and
- 24 h. The right to appeal a finding of guilt or any pretrial rulings.

25 **5. United States Sentencing Guidelines.** Defendant understands and
 26 acknowledges that the Court must consider the sentencing range calculated under the
 27 United States Sentencing Guidelines and possible departures under the Sentencing
 28 Guidelines together with the other factors set forth in Title 18, United States Code,

1 Section 3553(a), including: (1) the nature and circumstances of the offenses; (2) the
2 history and characteristics of Defendant; (3) the need for the sentence to reflect the
3 seriousness of the offenses, to promote respect for the law, and to provide just
4 punishment for the offenses; (4) the need for the sentence to afford adequate deterrence to
5 criminal conduct; (5) the need for the sentence to protect the public from further crimes
6 of Defendant; (6) the need to provide Defendant with educational and vocational training,
7 medical care, or other correctional treatment in the most effective manner; (7) the kinds
8 of sentences available; (8) the need to provide restitution to victims; and (9) the need to
9 avoid unwarranted sentence disparity among defendants involved in similar conduct who
10 have similar records. Accordingly, Defendant understands and acknowledges that:

11 a. The Court will determine Defendant's Sentencing Guidelines range
12 at the time of sentencing;

13 b. After consideration of the Sentencing Guidelines and the factors in
14 18 U.S.C. 3553(a), the Court may impose any sentence authorized by law, up to
15 the maximum term authorized by law;

16 c. The Court is not bound by any recommendation regarding the
17 sentence to be imposed, or by any calculation or estimation of the Sentencing
18 Guidelines range offered by the parties or the United States Probation Department,
19 or by any stipulations or agreements between the parties in this Plea Agreement;
20 and

21 d. Defendant may not withdraw a guilty plea solely because of the
22 sentence imposed by the Court.

23 6. **Ultimate Sentence.** Defendant acknowledges that no one has promised or
24 guaranteed what sentence the Court will impose.

25 7. **Statement of Facts.** The parties agree on the following facts. Defendant
26 admits Defendant is guilty of the charged offense:

1 On May 30, 2020, there was a large protest in downtown Seattle,
 2 Washington. SPD officers and other employees were in the area to direct
 3 traffic and ensure the safety of people and property. SPD officers and
 4 employees used several vehicles to respond to the protest, including
 Vehicle 5 and Vehicle 6.

5 Kelly Jackson was present at the protest in downtown Seattle. Jackson was
 6 wearing a dark sweatshirt with a distinctive logo on the front, khaki pants,
 7 white shoes, a half-face respirator with black semi-rectangular filter
 cartridges, Smith ski goggles with black rims and yellow tinted lens, and a
 8 black High Sierra brand backpack.

9 At approximately 4:04 p.m., Jackson emerged from a large crowd and
 10 approached Vehicle 5, which was smoking and had already been heavily
 11 damaged by other persons who had smashed the vehicle's windows,
 12 removed the doors, and caused other physical damage. Jackson threw a
 13 glass bottle with an ignited fabric wick (i.e., a "Molotov cocktail" device)
 14 through the open driver's side door of Vehicle 5. After the bottle entered
 Vehicle 5, flames spread rapidly through the passenger compartment. As
 the flames receded, a few areas of the interior of the vehicle continued to
 burn. After throwing the device, Jackson ran back into the crowd.

15 At approximately 5:20 p.m., Jackson threw another Molotov cocktail
 16 device at the front of Vehicle 6. The device hit the windshield of Vehicle 6,
 17 bounced to the west, and then shattered on the sidewalk. After the bottle
 18 shattered, flames spread rapidly across an approximately 12-foot radius
 19 along the sidewalk. After throwing the device, Jackson ran north on 6th
 Avenue into a large crowd.

20 Jackson manufactured the Molotov cocktail devices earlier on May 30,
 21 2020, after researching Molotov cocktails over the Internet.

22 The above-referenced Molotov cocktails have been certified by forensic
 23 examiners as "destructive devices" under federal law. Jackson does not
 24 have any items registered to him under the National Firearms Registration
 and Transfer Record.

25 The parties agree that the Court may consider additional facts contained in
 26 the Presentence Report (subject to standard objections by the parties) and/or
 27 that may be presented by the United States or Defendant at the time of
 sentencing, and that the factual statement contained herein is not intended
 28

1 to limit the facts that the parties may present to the Court at the time of
 2 sentencing.

3 **8. Sentencing Factors.** The parties agree that the following Sentencing
 4 Guidelines provisions apply to this case:

5 A base offense level of 18, pursuant to USSG § 2K2.1(a)(5), because the
 6 offense involved a “firearm” described in 26 U.S.C. § 5845(a), that is, a
 7 destructive device;

8 A two-level upward adjustment, pursuant to USSG § 2K2.1(b)(3)(B),
 9 because the offense involved a destructive device;

10 A four-level upward adjustment under USSG § 2K2.1(6)(B), because the
 11 defendant possessed and used the destructive devices in connection with
 12 another felony offense, that is, *Arson*, in violation of Title 18, United States
 13 Code, Sections 844(f)(1) and (i).

14 The parties agree they are free to present arguments regarding the applicability of
 15 all other provisions of the United States Sentencing Guidelines. Defendant understands,
 16 however, that at the time of sentencing, the Court is free to reject these stipulated
 17 adjustments, and is further free to apply additional downward or upward adjustments in
 18 determining Defendant’s Sentencing Guidelines range.

19 **9. Acceptance of Responsibility.** At sentencing, if the Court concludes
 20 Defendant qualifies for a downward adjustment acceptance for acceptance of
 21 responsibility pursuant to USSG § 3E1.1(a) and Defendant’s offense level is 16 or
 22 greater, the United States will make the motion necessary to permit the Court to decrease
 23 the total offense level by three (3) levels pursuant to USSG §§ 3E1.1(a) and (b), because
 24 Defendant has assisted the United States by timely notifying the United States of
 25 Defendant’s intention to plead guilty, thereby permitting the United States to avoid
 26 preparing for trial and permitting the Court to allocate its resources efficiently.

27 **10. Recommendation Regarding Imprisonment.** The government agrees to
 28 recommend a sentence no greater than within the advisory Sentencing Guidelines range
 as calculated by the Court at the time of sentencing. Defendant is free to recommend any

1 sentence. Defendant understands that these recommendations are not binding on the
 2 Court and the Court may reject the recommendation of the parties and may impose any
 3 term of imprisonment up to the statutory maximum penalty authorized by law. Defendant
 4 further understands that Defendant cannot withdraw the guilty plea simply because of the
 5 sentence imposed by the Court. Except as otherwise provided in this Plea Agreement, the
 6 parties are free to present arguments regarding any other aspect of sentencing.

7 **11. Restitution.** Defendant agrees that the Court can order Defendant to pay
 8 restitution to the Seattle Police Department, the victim of Defendant's crimes. Defendant
 9 is aware that the United States will present evidence supporting an order of restitution for
 10 all losses caused by all of Defendant's criminal conduct known to the United States at the
 11 time of Defendant's guilty plea. In exchange for the promises by the United States
 12 contained in this plea agreement, Defendant agrees that Defendant will be responsible for
 13 any order by the District Court requiring the payment of restitution for such losses.

14 a. The full amount of restitution shall be due and payable immediately
 15 on entry of judgment and shall be paid as quickly as possible. If the Court finds
 16 that the defendant is unable to make immediate restitution in full and sets a
 17 payment schedule as contemplated in 18 U.S.C. § 3664(f), Defendant agrees that
 18 the Court's schedule represents a minimum payment obligation and does not
 19 preclude the U.S. Attorney's Office from pursuing any other means by which to
 20 satisfy the defendant's full and immediately-enforceable financial obligation,
 21 including, but not limited to, by pursuing assets that come to light only after the
 22 district court finds that the defendant is unable to make immediate restitution.

23 b. Defendant agrees to disclose all assets in which Defendant has any
 24 interest or over which Defendant exercises control, directly or indirectly, including
 25 those held by a spouse, nominee, or third party. Defendant agrees to cooperate
 26 fully with the United States' investigation identifying all property in which
 27 Defendant has an interest and with the United States' lawful efforts to enforce
 28 prompt payment of the financial obligations to be imposed in connection with this

prosecution. Defendant's cooperation obligations are: (1) before sentencing, and no more than 30 days after executing this Plea Agreement, truthfully and completely executing a Financial Disclosure Statement provided by the United States Attorney's Office and signed under penalty of perjury regarding Defendant's and Defendant's spouse's financial circumstances and producing supporting documentation, including tax returns, as requested; (2) providing updates with any material changes in circumstances, as described in 18 U.S.C. § 3664(k), within seven days of the event giving rise to the changed circumstances; (3) authorizing the United States Attorney's Office to obtain Defendant's credit report before sentencing; (4) providing waivers, consents or releases requested by the U.S. Attorney's Office to access records to verify the financial information; (5) authorizing the U.S. Attorney's Office to inspect and copy all financial documents and information held by the U.S. Probation Office; (6) submitting to an interview regarding Defendant's Financial Statement and supporting documents before sentencing (if requested by the United States Attorney's Office), and fully and truthfully answering questions during such interview; and (7) notifying the United States Attorney's Office before transferring any interest in property owned directly or indirectly by Defendant, including any interest held or owned in any other name, including all forms of business entities and trusts.

c. The parties acknowledge that voluntary payment of restitution prior to the adjudication of guilt is a factor the Court considers in determining whether Defendant qualifies for acceptance of responsibility pursuant to USSG § 3E1.1(a).

12. **Abandonment of Contraband.** Defendant also agrees that, if any federal law enforcement agency seized any illegal contraband that was in Defendant's direct or indirect control, Defendant consents to the federal administrative disposition, official use, and/or destruction of that contraband.

1 13. **Non-Prosecution of Additional Offenses.** As part of this Plea Agreement,
 2 the United States Attorney's Office for the Western District of Washington agrees to
 3 dismiss Counts 2 and 4 of the Indictment filed in this matter and not to prosecute
 4 Defendant for any additional offenses known to it as of the time of this Plea Agreement
 5 based upon evidence in its possession at this time, and that arise out of the conduct giving
 6 rise to this investigation. In this regard, Defendant recognizes the United States has
 7 agreed not to prosecute all of the criminal charges the evidence establishes were
 8 committed by Defendant solely because of the promises made by Defendant in this
 9 Agreement. Defendant agrees, however, that for purposes of preparing the Presentence
 10 Report, the United States Attorney's Office will provide the United States Probation
 11 Office with evidence of all conduct committed by Defendant. Defendant agrees that any
 12 charges to be dismissed before or at the time of sentencing were substantially justified in
 13 light of the evidence available to the United States, were not vexatious, frivolous or taken
 14 in bad faith, and do not provide Defendant with a basis for any future claims under the
 15 "Hyde Amendment," Pub. L. No. 105-119 (1997).

16 14. **Breach, Waiver, and Post-Plea Conduct.** Defendant agrees that, if
 17 Defendant breaches this Plea Agreement, the United States may withdraw from this Plea
 18 Agreement and Defendant may be prosecuted for all offenses for which the United States
 19 has evidence. Defendant agrees not to oppose any steps taken by the United States to
 20 nullify this Plea Agreement, including the filing of a motion to withdraw from the Plea
 21 Agreement. Defendant also agrees that, if Defendant is in breach of this Plea Agreement,
 22 Defendant has waived any objection to the re-institution of any charges that previously
 23 were dismissed or any additional charges that had not been prosecuted.

24 Defendant further understands that if, after the date of this Agreement, Defendant
 25 should engage in illegal conduct, or conduct that violates any conditions of release or the
 26 conditions of confinement (examples of which include, but are not limited to, obstruction
 27 of justice, failure to appear for a court proceeding, criminal conduct while pending
 28 sentencing, and false statements to law enforcement agents, the Pretrial Services Officer,

1 Probation Officer, or Court), the United States is free under this Plea Agreement to file
 2 additional charges against Defendant or to seek a sentence that takes such conduct into
 3 consideration by requesting the Court to apply additional adjustments or enhancements in
 4 its Sentencing Guidelines calculations in order to increase the applicable advisory
 5 Guidelines range, and/or by seeking an upward departure or variance from the calculated
 6 advisory Guidelines range. Under these circumstances, the United States is free to seek
 7 such adjustments, enhancements, departures, and/or variances even if otherwise
 8 precluded by the terms of the Plea Agreement.

9 **15. Waiver of Appellate Rights and Rights to Collateral Attacks.** Defendant
 10 acknowledges that, by entering the guilty pleas required by this plea agreement,
 11 Defendant waives all rights to appeal from Defendant's conviction, and any pretrial
 12 rulings of the Court, and any rulings of the Court made prior to entry of the judgment of
 13 conviction. Defendant further agrees that, provided the Court imposes a custodial
 14 sentence that is within or below the Sentencing Guidelines range as determined by the
 15 Court at the time of sentencing, Defendant waives to the full extent of the law:

16 a. Any right conferred by Title 18, United States Code, Section 3742,
 17 to challenge, on direct appeal, the sentence imposed by the Court, including any
 18 fine, restitution order, probation or supervised release conditions, or forfeiture
 19 order (if applicable); and

20 b. Any right to bring a collateral attack against the conviction and
 21 sentence, including any restitution order imposed, except as it may relate to the
 22 effectiveness of legal representation.

23 This waiver does not preclude Defendant from bringing an appropriate motion
 24 pursuant to 28 U.S.C. § 2241, to address the conditions of Defendant's confinement or
 25 the decisions of the Bureau of Prisons regarding the execution of Defendant's sentence.

26 If Defendant breaches this Plea Agreement at any time by appealing or collaterally
 27 attacking (except as to effectiveness of legal representation) the conviction or sentence in
 28 any way, the United States may prosecute Defendant for any counts, including those with

1 mandatory minimum sentences, that were dismissed or not charged pursuant to this Plea
2 Agreement.

3 **16. Voluntariness of Plea.** Defendant agrees that Defendant has entered into
4 this Plea Agreement freely and voluntarily, and that no threats or promises were made to
5 induce Defendant to enter a plea of guilty other than the promises contained in this Plea
6 Agreement or set forth on the record at the change of plea hearing in this matter.

7 **17. Statute of Limitations.** In the event this Plea Agreement is not accepted by
8 the Court for any reason, or Defendant breaches any of the terms of this Plea Agreement,
9 the statute of limitations shall be deemed to have been tolled from the date of the Plea
10 Agreement to: (1) thirty days following the date of non-acceptance of the Plea
11 Agreement by the Court; or (2) thirty days following the date on which a breach of the
12 Plea Agreement by Defendant is discovered by the United States Attorney's Office.

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1 18. **Completeness of Agreement.** The United States and Defendant
2 acknowledge that these terms constitute the entire Plea Agreement between the parties,
3 except as may be set forth on the record at the change of plea hearing in this matter. This
4 Agreement binds only the United States Attorney's Office for the Western District of
5 Washington. It does not bind any other United States Attorney's Office or any other
6 office or agency of the United States, or any state or local prosecutor.

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8 Dated this 6th day of January, 2021.

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10 _____
11 /s/ K. Jackson (by counsel with consent of KJ)
12 KELLY THOMAS JACKSON
13 Defendant

14 _____
15 /s/ R. Goldsmith
16 ROBERT GOLDSMITH
17 Attorney for Defendant

18 _____
19 /s Todd Greenberg
20 TODD GREENBERG
21 Assistant United States Attorney